

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,168

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Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Social and Rehabilitation Services (SRS) revoking her Family Day Care Home Registration certificate.

FINDINGS OF FACT

1. The petitioner has operated a family day care business in her home for many years under a family day care home registration certificate issued by the Department of Social and Rehabilitation Services.
2. The petitioner has legal guardianship of her eleven-year-old grandson, J.L., who resides with her. The petitioner also cared for her nine-year-old granddaughter, K.V., a first cousin of J.L., from 1990 until June of 1992. During the time K.V. was in her care, she attended the day care for several hours each day. K.V.'s mother, T.V., the daughter of the petitioner, only occasionally paid for the day care services.
3. In September of 1995, on the eve of her first confession in the Catholic Church, K.V. was noticeably upset and crying. Her mother, T.V., asked her what was wrong and K.V. told her that she was afraid to go to confession because of what her cousin, J.L., had done to her while she was at her grandmother's day care. When her mother asked her what had occurred, K.V. told her that J.L. had taken his penis out of his pants and asked her to put her mouth on it. She told her mother that she had refused. She also said that it had occurred upstairs in J.L.'s bedroom and had happened more times than she could count.
4. Upon hearing this allegation, T.V. contacted her sister, the mother of J.L., J.L.'s father and her mother, the petitioner. The petitioner told T.V. that she did not believe what her granddaughter said because she was always watching the children and they had no opportunity for such activities. J.L.'s father advised T.V. to call SRS so that J.L. could get some help. On September 11, 1995, T.V. reported the allegations to SRS.
5. On September 12, 1995, an SRS investigator came to T.V.'s home and interviewed K.V. alone. K.V. told her that when she was five and he was seven, J.L. would take her to his room, take her pants down, touch her with his hand and kiss her "privates" against her will. She also reported that he took out his penis and wanted her to put her mouth on it but she refused.

6. The fathers of both K.V. and J.L. were interviewed but had no information to offer on the allegation. T.V. was also interviewed and, in addition to repeating the allegation made to her by her daughter, alleged that her mother had abused her as a child by whipping her with various objects causing scars, by failing to protect her and her sisters from molestation by her male friends and by requesting her assistance in killing one of her boyfriends. Her brother, W.H., the petitioner's adult son was also interviewed and alleged as well that his mother had abused him as a child and that he observed her abusing children at her day care either by carrying them by one arm or yelling at and using profanity in front of them. J.L. himself was interviewed and denied the accusations. Finally, the petitioner was interviewed and she denied that the activity had occurred or that her granddaughter was in any danger. She specifically countered that J.L.'s room was not upstairs as her granddaughter claimed but rather downstairs next to the kitchen.

7. The investigator also reviewed a report of abuse filed in 1993 regarding J.L. and another child at the day care which allegedly occurred in June of 1992. While that report was not substantiated because the two children were close in age and were determined to have been engaged in mutual exploration, the report did contain a description provided by the petitioner of the location of J.L.'s room which was described as "upstairs".

8. Based upon the above information, the investigator determined that the report of abuse should be substantiated because she found the child's allegations to be credible, and because those allegations described adult sexual behavior, a perpetrator two years older than the victim and coercion. A report was substantiated in the registry finding that K.V. had been abused. However, J.L. was not listed as the perpetrator because he was under the age of ten.

9. On January 2, 1996, the Department notified the petitioner that it intended to revoke her day care registration certificate as of February 1, 1996, based on her failure to properly supervise the children in her care or to intervene to protect either K.V. or the other child involved in the 1993 allegation from repeated instances of sexual molestation; on the continued presence of J.L. in the home which constitutes a present hazard to other children in the day care; on her lifting children by one arm, yelling at them and using profanity; and on her demonstrated inability to care adequately for children based upon the allegations of her children regarding her treatment of them during their minority.

10. The petitioner appealed that decision and asked for a Commissioner's review and for proof of the many accusations against her. Following the review, the Commissioner notified the petitioner in a letter dated March 1, 1996, that the evidence gathered by the investigator was found to be credible, that her explanations and denials had been rejected and that the Department continued to propose revocation of the registration certificate as set out in the prior letter dated January 2, 1996.

11. At the hearing, the petitioner's son did not testify but her daughter did. She repeated what her daughter had told her about the molestation by the cousin in the petitioner's day care home. She also accused her mother of tying her to a bed and whipping her with a horsewhip, a belt and an extension cord which she claims left permanent bruises; of incessant screaming and hollering; of bringing home boyfriends who molested her sister; and of her mother's refusal to believe these molestations occurred and failure to protect her sister. It is difficult to credit the petitioner's testimony with regard to the historical events for several reasons. There was no corroborating evidence offered although there certainly should have been an abundance in the form of her siblings' testimony and or school or medical records with regards to the bruising. Even more damaging was her daughter's admission that in spite of these horrendous allegations, she decided to enroll her three year old daughter in her mother's day care.

Finally, her mother produced a letter written by her daughter some ten years ago in which she indicated that she and her siblings had blamed her for things which were not her fault and stating that she was a good mother. In combination, these facts throw grave doubt on the reliability of the daughter's statements with regard to the petitioner's actions in her childhood, making it unfair to make factual findings based on these allegations.

12. The SRS worker also testified at hearing as to what the child victim told her as set forth in paragraph five above. The petitioner does not dispute that her granddaughter made those statements but rather believes that she was confused as to what she was describing or as to whom the perpetrator might be. She suggested that it might have been a neighbor next door. However, the fact that the granddaughter recounted the same story to both her mother and the SRS worker in a consistent manner, that she offered this information spontaneously and with a frightened affect and offered details as to where and how frequently it occurred enhance the credibility of her statements. In addition, the fact that another child also named J.L. as the perpetrator of her alleged sexual molestation adds to the child's credibility with regard to the identity of the abuser. Therefore, the allegations made by the child in paragraph five above are found to be true.

13. It is also found that the petitioner was unaware that J.L. was taking K.V. into his room and behaving inappropriately with her. At no time during the hearing or at any other time in these proceedings has the petitioner acknowledged that there could have been a problem with J.L. taking K.V. or other children into his room or acknowledged her need to closely supervise his activities. She rather denies that any child was or is ever allowed in J.L.'s room, a statement which cannot be credited in light of K.V.'s credible testimony, and has consistently defended accusations against J.L. as being implausible and groundless, although the evidence indicates the contrary.

ORDER

The decision of the Department to revoke the petitioner's day care registration certificate is upheld.

REASONS

The Commissioner of the Department of Social and Rehabilitation Services has the authority to adopt rules and regulations governing the day care registration program, including standards to be met and conditions for revocation. 33 V.S.A. § 306(b)(1). Those rules and regulations are required by statute to be "designed to insure that children in . . . family day care homes are provided with wholesome growth and educational experiences, and are not subjected to neglect, mistreatment or immoral surroundings". 33 V.S.A. § 3503. Such rules and regulations have been adopted and are found in the "Regulations for Family Day Care Homes", effective April 1, 1993. Furthermore, the Commissioner has the specific authority to revoke registrations "for cause after hearing". 33 V.S.A. § 306(b)(3).

Among regulations adopted by the Commissioner are the following:

CHILD CARE - The developmentally appropriate care, protection and supervision which is designed to ensure wholesome growth and educational experiences for children outside of their homes for periods of less than 24 hours a day in a day care facility.

REVOCATION - The formal act of closing a day care home due to violation of these regulations...

SUPERVISION OF CHILDREN - The knowledge of and accounting for the activity and whereabouts of each child in care and the proximity of staff to children at all times assuring immediate intervention of staff to safeguard a child from harm and maintenance of the program of the facility.

SECTION II - PROGRAM

2. There shall be at least one caregiver present and providing child care at all times when children are in care...

SECTION V - HEALTH AND SAFETY

1. The registrant is responsible for the health and safety of children in care.

10. Children in care shall be protected from any and all conditions which threaten a child's health, safety, and well-being...

Regulations for Family Day Care Homes

April 1, 1993

The Commissioner has concluded that the petitioner's lack of awareness of the situation described by her granddaughter is a violation of the above regulations. The evidence in this matter indicates that the petitioner's granddaughter, who was a client in her day care, was treated in a sexually inappropriate manner by the petitioner's grandson repeatedly over a number of months

in the day care home. The evidence also shows that the petitioner should have been aware that this was occurring but was either unaware or ignored the fact that her grandson was taking her granddaughter into his room on a repeated basis. Furthermore, in spite of the fact that another child had also complained about the grandson's behavior in 1993, there is no evidence that the grandmother allowed for the possibility of her grandson's taking these actions or took any precautions to prevent them from reoccurring. There is nothing in the evidence which would indicate that she intends to do so in the future either. The above regulations prohibit such behavior and were violated by the petitioner's inattention and lack of insight into her past and future obligations with regard to children in her care.

The Commissioner has the authority to determine whether or not regulatory violations are actually placing children in danger and whether revocation is the appropriate remedy in a given situation. 3 V.S.A. § 8814, Huntington v. SRS, 139 Vt. 416 (1981), Fair Hearing No. 10,414. The Board may only overturn that decision if the Commissioner has acted arbitrarily, capriciously or has otherwise abused his discretion. Fair Hearing No. 12,804. The petitioner has failed to show that the Commissioner's decision to revoke was unfounded in this case. There are sufficient facts in the record to support the Commissioner's belief that children placed in the petitioner's care are not in a safe environment, thereby justifying the decision made to revoke the registration. The Board may not, in that case, substitute its judgment for that of the Commissioner. Therefore, the decision is affirmed.

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